



4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0304]

California Meal and Rest Break Rules; Petition for Determination of Preemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of petition for determination of preemption; request for comments.

SUMMARY: FMCSA requests comments on a petition submitted by the American Trucking Associations, Inc. (ATA) requesting a determination that the State of California's meal and rest break rules are preempted by Federal law. Among other things, FMCSA requests comments on what effect, if any, California's meal and rest break requirements may have on interstate commerce.

DATES: Comments must be received on or before October 29, 2018.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA-2018-0304 by any of the following methods:

- *Federal eRulemaking Portal:* www.regulations.gov. See the *Public Participation and Request for Comments* section below for further information.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

- *Fax:* 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the *Privacy Act* heading below.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Medalen, Regulatory Affairs Division; FMCSA Chief Counsel; Telephone: (202) 366-1354; E-mail: Charles.Medalen@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2018-0304), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to www.regulations.gov and put the docket number, "FMCSA-2018-0304" in the "Keyword" box, and click "Search." When the new

screen appears, click on “Comment Now!” button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

Docket. For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

Privacy Act. In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its determination. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

Background

On September 24, 2018, ATA submitted a petition to FMCSA requesting a determination under 49 U.S.C. § 31141 that the State of California’s Meal and Rest Break rules are preempted by Federal law (Petition). The petition stated that, under California law, within the transportation industry, an employer may not employ an

employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. Petition at 1-2 (citing Cal. Lab. Code § 512(a)). The petition stated that an employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. *Id.* Ordinarily, the employee must be “relieved of all duty” for the period, unless “the nature of the work prevents an employee from being relieved of all duty,” and the employee enters into a written agreement to remain on duty, which he or she may revoke at any time. *Id.* at 2 (citing Cal. Industrial Wage Commission Wage Order No. 9 § 11(C)).

The petition also stated that California law provides that, within the transportation industry, every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. *Id.* (citing Wage Order No. 9 § 12(a)). The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages. *Id.*

In short, California generally requires employers in the transportation industry to provide employees with an off-duty 30-minute break for every five hours worked, before

the end of each five-hour period; and a ten-minute off-duty break for every four hour period (or “major fraction thereof,” i.e., period greater than two hours), in the middle of each such period if possible. Commercial drivers covered by collective bargaining agreements that meet certain statutorily enumerated criteria, however, are not subject to the meal period requirement. *See id.* (citing Cal. Lab. Code § 512(e), (f)(2)).

Applicable Law

Section 31141 of title 49, United States Code, prohibits States from enforcing a law or regulation on commercial motor vehicle safety that the Secretary of Transportation (Secretary) has determined to be preempted. To determine whether a State law or regulation is preempted, the Secretary must decide whether a State law or regulation: (1) has the same effect as a regulation prescribed under 49 U.S.C. § 31136, which is the authority for much of the Federal Motor Carrier Safety Regulations (FMCSRs); (2) is less stringent than such a regulation; or (3) is additional to or more stringent than such a regulation. 49 U.S.C. § 31141(c)(1).

If the Secretary decides that a State law or regulation has the same effect as a regulation prescribed under 49 U.S.C. § 31136, the State law or regulation may be enforced. *Id.* § 31141(c)(2). If the Secretary decides that a State law or regulation is less stringent than a regulation prescribed under 49 U.S.C. § 31136, the State law or regulation may not be enforced. *Id.* § 31141(c)(3). If the Secretary decides that a State law or regulation is additional to or more stringent than a regulation prescribed by the Secretary under 49 U.S.C. § 31136, the State law or regulation may be enforced unless the Secretary decides that the State law or regulation (1) has no safety benefit; (2) is incompatible with the regulation prescribed by the Secretary; or (3) would cause an

unreasonable burden on interstate commerce. *Id.* § 31141(c)(4). In deciding whether a State law or regulation will cause an unreasonable burden on interstate commerce, the Secretary may consider the cumulative effect on implementation of the State law or regulation and all similar laws and regulations of other States. *Id.* § 31141(c)(5). The Secretary's authority under 49 U.S.C. § 31141 is delegated to the FMCSA Administrator by 49 C.F.R. § 1.87(f).

Request for Comments

Although preemption under 31141 is a legal determination reserved to the judgment of the Agency, FMCSA seeks comment on any issues raised in ATA's petition or otherwise relevant. The Agency has placed ATA's petition in the docket.

Issued on: September 28, 2018.

Raymond P. Martinez,
Administrator.

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